Calendar No. 593

99TH CONGRESS *2d Session*	SENATE	REPORT 99–274

EXPORT-IMPORT BANK ACT AMENDMENTS OF 1986

REPORT

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 2248

together with

ADDITIONAL VIEWS

MARCH 26 (legislative day, MARCH 18), 1986.—Ordered to be printed

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REPORT
99-274

EXPORT-IMPORT BANK ACT AMENDMENTS OF 1986

MARCH 26 (legislative day, MARCH 18), 1986.—Ordered to be printed

Mr. HEINZ, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

[To accompany S. 2248]

HISTORY OF THE LEGISLATION

On February 6, 1986, S. 2058, the administration's proposed legislation to amend and extend the charter of the Export-Import Bank for 5 years, was introduced by Senators Heinz, Garn, and Proxmire (by request).

On February 7, 1986, a hearing was held before the International Finance and Monetary Policy Subcommittee on the Committee on Banking, Housing, and Urban Affairs on the Export-Import Bank reauthorization bill, including the administration's proposal to replace Eximbank direct loans with an interest subsidy payment scheme, known as I-Match.

Testimony was received from William H. Draper III, President and Chairman of the Export-Import Bank; Frederick D. Wolf, General Accounting Office; Fruzsina Harsanyi, Combustion Engineering, Inc. (representing the National Foreign Trade Council); Larry Williams, Caterpillar Tractor Co. (representing the National Association of Manufacturers); Axel O. Velden, Johnson & Johnson (representing the Emergency Committee for American Trade); and Rosemary Mazon, Allied-Signal, Inc. (representing the Coalition for Employment through Exports).

The Committee met in open session on March 13, 1986. After adopting six amendments to a Committee print substitute the Committee agreed without objection to the substitute and ordered the bill favorably reported, as amended by the amended substitute, in the form of an original bill.

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EXPLANATION OF THE PROVISIONS

Fees

In recent years, the Export-Import Bank has been engaged in extensive marketing efforts to inform and counsel U.S. businesses and banks, particularly amaller entities, about its export assistance programs. These efforts have involved Eximbank-sponsored seminars and conferences, as well as various publications describing its programs and activities.

The Committee concurs in the administration's recommendation to give Eximbank the authority to offset the marginal costs of conferences, seminars, and publications through reasonable fees. Such fees should cover only the additional expenses involved in providing these services or publications, however. They could not be used to offset other Bank expenses, such as travel or entertainment, or to cover routine Eximbank activities, such as processing loan applications or gathering information on prospective borrowers; nor could fees be charged directly for such activities under this provision. Further, fees allowed under this provision may not be used to cover Eximbank's fixed overhead expenses, such as salaries, and care should be taken to ensure that fees charged do not compromise the Bank's independence or objectivity.

Medium-term direct credit program

When the Bank established a competitive financing program for medium-term exports (as a result of the requirements of the Export-Import Bank Act Amendments of 1983) it chose to offer this financing through commercial banks rather than directly to the purchaser. For a medium-term transaction facing foreign officially supported export credit competition, the Bank lends at 1009 basis points below the OECD Arrangement rate to a U.S. bank selected by the exporter or buyer. That bank then on-lends those funds to the foreign buyer at the Arrangement rate, earning 1 percent as the "middleman" in the transaction. If the commercial bank believes the foreign buyer presents a sufficient risk, the bank may also obtain a medium-term bank guarantee from Eximbank (for an additional fee).

Eximbank's decision not to lend directly to the foreign buyer (as it does for larger transactions in the long-term direct loan program) was based on an unwillingness to carry the administrative burden of handling a large volume of smaller direct loans. Thus, the Bank decided that on transactions typically financed on terms of 5 years or less and involving an export value of less than approximately $10 million, it would use U.S. commerical banks as its delivery system.

This indirect approach can cause several administrative and competitiveness problems for U.S. exporters of goods and services relying on medium-term financing. First, the exporter may incur the delay and duplication of effort inherent in working through a commercial bank intermediary to obtain support. Second, application and loan documentation requirements can be more cumbersome, particularly if the lender is working with the foreign buyer rather than the U.S. exporter, since the exporter is required to certify the terms and conditions of the transaction. Third, financing

under the current Eximbank medium-term credit program can present higher costs to the purchaser than would a medium-term direct credit.

The bill directs Eximbank to make available medium-term financing in a manner similar to that offered in the Bank's direct loan program for larger, longer-term sales. Specifically, for export transactions of at least $50,000, Eximbank should allow the exporter the option of choosing a direct credit from Eximbank to the foreign buyer of choosing to use the Bank's current medium-term financing program. In any case, fees must be proportionally equivalent to those charged by the Bank on long-term direct credits (including the requirements that they be related to risk and above all be competitive with fees required by competing foreign government export credit agencies), and simple administrative and documentary procedures must be provided.

Competitiveness mandate

Despite 1983 amendments to section 2(b)(1)(B) of the charter, intended to strengthen the Bank's mandate to provide competitive-financing, the Committee is concerned that the Bank is still not operating in a manner that fully reflects congressional intent. This is not to diminish the important steps that the Bank has made toward improving its competitiveness. Eximbank's interest rates are now at the minimums allowable under the Arrangement (fully competitive with other OECD countries), the Bank has recently increased to 85 percent the proportion of export contract values supported with a direct credit, and it generally matches the repayment term offered by other countries.

However, as the trade environment becomes increasingly competitive, and export credit agencies seek to improve their country's competitive edge, terms and conditions other than the basic ones of interest rate, cover, and repayment term become more critical. Thus, in standing ready to neutralize fully the effect of foreign official export credits Eximbank must be fully competitive on the total finance package when compared to foreign competitor(s). The bill makes clear that the overall Eximbank package of rates, terms, and other conditions should be designed to neutralize the effect of foreign official export credits on sales competition.

In today's environment such competitiveness may encompass the effect of the level of fees, fee payment structure, capitalization of interest, and other factors. The Bank may also wish to consider the impact of local cost support and other competitiveness factors on the total finance package structure, being flexible where necessary in order to avoid lost U.S. exports due to uncompetitive financing elements. Eximbank must demonstrate greater willingness to improve various aspects of its standard terms and conditions when such improvements are necessary to assure that competitive financing is neutralized.

At the same time, the Committee does not minimize the importance to U.S. exporters and foreign buyers of predictable and standardized Eximbank support and recognizes that the U.S. export credit system need not—and cannot—match every element of official export credit programs worldwide. The intent of the Committee is not to escalate the level of international export credit compe-

tition by forcing Eximbank to match consistently the most liberal feature of each foreign competitor's offer; rather, the intent is to ensure the Eximbank lives up to the spirit of its congressional mandate to neutralize foreign financing, including features other than the basic ones of interest rate, repayment term, and percent of export value supported.

Credit application fees

In 1981 the Export-Import Bank began imposing a 2-percent application fee on foreign borrowers receiving direct loan support, primarily to supplement the Bank's income. While most foreign export credit agencies charge similar fees for risk protection support, such fees are generally not upfront charges due from (and immediately visible to) the borrowers; the fee is payable over the life of the loan and the exporter may pay the fee or pass it along to the buyer in the export price. Eximbank's credit fee, however, must be paid at the outset of the loan (or generally before final disbursement), is payable by the borrower, and is the same for every borrower, regardless of the riskness of the transaction. Despite numerous complaints from the exporting community regarding the transparency and arbitrary level of the fee Eximbank has made no attempts to make its fee structure similar to those required by foreign official credit agencies.

The bill, therefore, stipulates that, if Eximbank finds that a credit fee must be imposed, the Bank may only charge fees that reflect the risk inherent in the underlying transaction, that may be paid by the foreign buyer or the exporter, that may be amortized over the entire loan term (at the option of the exporter or purchaser), and that above all are competitive with fees required by foreign official credit agencies.

Reasonable assurance of repayment

In the development of Eximbank's legislative authority congressional intent has clearly and consistently been that the Bank should assume risks that private lenders will not. This requires that the Bank take a strategic, long-term view when deciding on the creditworthiness of a country or project, particularly projects backed by the obligation or guarantee of the host government.

In determining whether a reasonable assurance of repayment exists the Bank should not consider temporary interruption in the availability of foreign exchange or the possibility of a rescheduling to be a priori evidence that such assurance does not exist. Rather, the Bank should take into account the impact of credit availability on long-term U.S. export market share, a country's long-term economic strength and ongoing efforts at economic adjustment, and Eximbank's role of providing a credit "bridge" when temporary economic disruptions cause private lenders to cease new lending. Given this range of considerations it is essential that Eximbank's financing decisions be broadly consistent with the overall international economic policies of the U.S. Government. While certainly not requiring the taking on of bankrupt borrowers the Bank's mandate does require that Eximbank maintain its support for U.S. exports under conditions substantially more risky than would be acceptable to a private lender.

To ensure that the Export-Import Bank's risk assessments are consistent with overall U.S. Government policies and its own mandate the bill stipulates that decisions by the Eximbank and the Foreign Credit Insurance Association [FCIA] to withdraw new financing support to a country or to deny support for a transaction backed by a sovereign obligor or guarantor are subject to review by the National Advisory Council on International Monetary and Financial Policies [NAC]. The Committee believes that the NAC, with members from such agencies as the Treasury, the U.S. Trade Representative, the State Department, and the Federal Reserve Board, is best suited to determine whether such denials are consistent with the overall economic policies of the United States. Eximbank support may not be withdrawn if the NAC determines that a reasonable assurance of repayment does exist. In order for the NAC to fulfill its responsibilities the Bank should inform the NAC in a timely fashion of applications that have denied for sovereign risk reasons or decisions to withhold new financing support on a country-wide basis.

Multiple-exporter risk protection

Eximbank's support for small- and medium-sized exporters would be enhanced by allowing trade associations and other similar organizations to obtain risk-protection support from Eximbank for the medium-term exports of the "umbrella" organizations' member companies. The administrative burden on individual member companies would be reduced and more attractive private financing could be arranged for the member companies' exports, as the umbrella organization could negotiate with one lender on behalf of all its members. Lenders uninterested in providing export financing for an individual sale would be attracted to trade financing by the prospect of financing several sales brought to them by the trade association. Such a facility could also be conducive to the formation of export trading companies specializing in trade finance.

Eximbank currently issues such multiple-exporter risk protection policies to creditworthy trade associations and other similar organizations to cover their members short-term exports. The bill directs the Bank to provide similar coverage for medium-term exports (such as products and services typically sold on terms ranging from 181 days to 5 years).

Program access

Eximbank traditionally has not permitted non-U.S. banks or nonbank lenders to receive risk protection or funding in support of U.S. exports under certain of its programs. Further, U.S. exporters have not been able to access the Bank's medium-term guarantee or medium-term credit programs directly but have had to work through U.S. banks to obtain commitments under those programs. As exporters become more involved in directly arranging export financing for their customers, and as non-U.S. banks and nonbank lenders enter the U.S. trade finance arena, the Committee believes that Eximbank should extend program access to these entities. By permitting any creditworthy and experienced entity the ability to obtain an Eximbank commitment to support a transaction under any of Eximbank's programs, the Bank will expand the pool of fi-

nancial intermediaries that can assist in financing U.S. exports. In view of our record trade deficits this is a highly worthwhile goal.

Transferability of guarantees

The Export-Import Bank currently permits its guarantees or insurance to be transferred from an initial lender to a second lender or investor only after Eximbank has been notified and has given its consent to the transfer. This process and policy effectively prohibit the free and full transferability of Eximbank-guaranteed (or insured) paper and are designed to prohibit any active trading in Eximbank paper or the growth of a secondary market in such paper. Furthermore, Treasury Department policy against transferability creates a strong presumption against Eximbank approval of transfers.

This lack of free transferability is one major deterrent to the use of capital market funding (often at fixed rates of interest) for U.S. exports. Also, free transferability, when combined with certain other features (such as a loan pooling mechanism), could help lower the cost of financing for smaller transactions.

In view of the potential benefits of free and full transferability the bill directs Eximbank to establish such transferability for its medium-term and long-term guarantees and insurance.

Authorization

The administration proposed again this year that Export-Import Bank direct lending be replaced by an interest-rate subsidy payment scheme to private lenders (the so-called I-Match proposal). This bill contains no authority for the Bank to establish an interest rate subsidy program. The Committee considers I-Match to be undesirable for several reasons.

First, using private lenders rather Treasury to finance export credits results in a program that ultimately costs more to the Government, especially over the long term, since private lenders are a higher cost source of funds than is the Treasury Department.

Second, the I-Match proposal requires that the Export-Import Bank adopt significantly more complex procedures to accommodate the loan administration and documentary procedures that private lenders require.

Third, I-Match is an untested mechanism; it is unclear that private lenders will be able to replace direct lending efficiently and competitively in all cases requiring Eximbank support.

Finally, the Congressional Budget Office and other observers agree that, from the standpoint of the whole economy, I-Match has the same capital allocation effect as does direct lending by the Government and should therefore receive the same budgetary treatment as would direct loans. Thus, the consequences of adopting I-Match under present circumstances would be to institute a program that is more expensive in real terms while achieving none of the projected budgetary savings on paper.

However, the Committee does agree with the administration that there must be a change in the method of accounting for Eximbank direct lending in the budget. The current budgetary treatment of Eximbank direct lending overstates the true cost of the program and therefore unintentionally penalizes the Bank and the U.S. ex-

porting community. This penalty is particularly damaging during a time of record U.S. trade deficits and increased competition from foreign suppliers, who employ subsidized export financing support from their governments in order to capture increasing shares of international markets.

Under current procedures of the Appropriations and Budget Committees gross new direct loan authority (as set in annual program limitations) is scored as budget authority for budget allocation purposes. The Banking Committee is concerned that this treatment overstates the Bank's claim on the U.S. budget. Such scoring does not represent the fact that Eximbank loans are income-earning assets, repaid with interest. In this manner, Eximbank direct loans are put at a distinct disadvantage vis-a-vis grant or concessional loan programs. That is, a dollar-for-dollar relationship is assumed for both new Eximbank loans and expenditures from grant programs, even though budget authority scored for Eximbank credits represents money that will be repaid, with interest, while budget authority for grant programs is expended with no expectation of return.

Another problem with current budgetary treatment is that the subsidy cost of Eximbank loans—the true cost to the economy—is not captured in the budget, despite the fact that CBO, OMB, and GAO analysts agree that this is the most representative measure of such a government lending program. The advantage of the budget treatment inherent in the bill's funding authorization is that it is an explicit "pay as you go" approach.

The bill authorizes annual appropriations to cover the estimated net present value of the subsidy implicit in new Eximbank loans, based upon the level of new lending to be provided under the program limitations for that year as established in appropriations legislation. This subsidy amount represents the differential in interest rates between Eximbank lending and commercial lending. The Committee hopes that this more representative figure—the subsidy cost, rather than the program limitation on new direct loans—will be the budget authority figure scored by the Appropriations and Budget Committees.

This approach does not require any change in budget scoring rules related to the deficit calculation. Outlay calculations would remain unchanged. Eximbank's direct lending programs would continue to be subject to appropriations legislation and would thus be under full congressional control. However, in sharp contrast to the current situation, a more accurate measure of the true economic cost of the program is provided by means of a clear, upfront declaration of the cost of the program to the economy, as presented in authorization and appropriations legislation.

Such appropriations to the Bank would enable it to cover the cost of providing the financing essential to offset subsidized foreign government export credits that commercial lenders cannot provide. Further, these appropriations will protect Eximbank's capital and reserves from continued erosion.

Extension of charter

The Committee believes that an extension of the Eximbank charter for 10 years will be a clear indication of the importance placed

by the United States on providing its exporters with continuing assistance competitive with that available to their foreign counterparts. this long-term commitment to the Export-Import Bank is a necessary and beneficial pledge to U.S. exporters, potential foreign purchasers of U.S. goods and services, and other governments that the United States will continue to be a fierce competitor in foreign markets and a strong negotiator within the OECD to eliminate predatory export credit subsidies.

Impact Analysis

The current provisions of section 1911 of the Export-Import Bank Act Amendments of 1978 requires that the Bank consider the potential adverse impact that any Eximbank loan or financial guarantee is likely to have on domestic industries or employment. As part of this consideration, the Bank has implemented procedures to gather information on potentially affected parties.

However, the Committee has found that these procedures have not been employed regularly or rigorously. This has resulted in Board approval of a loan or guarantee without adequately considering the views of parties likely to be affected. A particularly visible example of this occurred in 1983, when the Bank offered a guarantee to support Singapore Airlines' purchase of Boeing 747 aircraft. A U.S. competitor of Singapore Airlines, Pan American Airways, felt that it was adversely impacted by this support, yet it was not consulted by Eximbank, and the Board gave only cursory attention to this statutory consideration.

The bill strengthens the directive to the Bank to consider the views of domestic parties who may be substantially adversely affected by the Eximbank loan or guarantee. The Bank is further directed to address these views in writing so that the Board of Directors may formally review this material before making a decision on the transaction. The intent of this amendment is to ensure that Eximbank more rigorously implements its existing procedures and the already existing requirements of the law.

At the same time, the Committee recognized the need for Eximbank to respond to exporters' requests for support in a timely and confidential fashion and intends that the Bank implement its adverse impact analysis procedures in a practical and workable fashion. The bill does not require the Bank to conduct further analysis if it views its existing body of knowledge as sufficient. Thus, this provision should be implemented in a way that does not reduce the Bank's competitiveness and flexibility in assisting U.S. exporters nor ignore the positive aspects of the export sale.

With regard to this requirement, the Bank is exempted from the provisions of the Administrative Procedures Act (subchapter II of chapter 5 of title 5, United States Code). Further, the Committee does not intend to give any party the right of judicial review with regard to the requirements of this provision.

Matching foreign official export credits in the United States

Since its enactment in 1978 the purpose of section 1912 of the Export-Import Bank Act Amendments of 1978 has been to protect U.S. suppliers from losing sales in the U.S. market as a result of foreign official financing more liberal than that allowed by the

OECD Arrangement. Congress did not anticipate that this provision would result in a significant drain on Eximbank resources to finance sales in the United States. Rather, the intent has been to have a strong and effective deterrent to foreign producers seeking to penetrate the U.S. market through export credit subsidies.

Recent experiences of U.S. producers seeking assistance under this section led the Committee to believe that section 1912 has not been implemented in the manner originally intended. The Treasury Department has generally refused to apply this section's procedures to cases involving imports from countries that are not parties to the OECD Arrangement on Guidelines for Officially Supported Export Credits. This refusal constitutes a misinterpretation of the existing law, which uses the OECD Arrangement as a standard by which to evaluate official financing of imports to the United States from whatever source. Because of the Treasury Department's reluctance to apply the law in cases involving non-OECD countries the Committee considered it advisable to amend the law to emphasize its universal application. The Committee reemphasizes that section 1912 applies, as currently in force, to financing offered on terms more liberal than those allowed under the Arrangement by any government, irrespective of whether that government is a party to the Arrangement or other similar agreement. The language in the bill serves to underscore this point.

A second problem relates to Treasury's reluctance to authorize the Bank to provide financing under this section, despite a 1983 amendment directing Treasury to do so if financing is likely to be a "significant" (as opposed to a "determining") factor in the purchase decision. Thus, this amendment also provides that Treasury's role be limited to ascertaining that a nonconforming financing offer has been made and is still outstanding. Once that finding has been made Treasury must give Eximbank the authority to offer a matching credit if negotiations have failed to eliminate the problem. The Bank's decision will then be based on its standard assessment of the transaction.

Report on medium-term programs

Exporters and banks have raised a number of concerns over Eximbank's existing medium-term financing and risk-protection programs. Some of these concerns relate to the basic competitiveness of the medium-term programs with regard to fees charged, repayment terms offered, and so forth. Many concerns seem to arise from Eximbank's administrative procedures or documentary requirements, such as not permitting U.S. exporters to obtain medium-term financing directly, not providing guarantee documentation to cover situations in which the lender's relationship is with the foreign buyer (rather than with the U.S. supplier), different procedures and requirements for essentially the same coverage under the medium-term insurance and guarantee programs, and inflexibility in adjusting standard policies to fit nonstandard transactions. Another set of administrative complications arises from the fact that Eximbank has chosen not to provide competitive financing directly to foreign buyers on medium-term exports but rather provides this support indirectly by lending to U.S. commercial banks, which on-lend the funds to foreign buyers.

Since many of these concerns relate to internal Eximbank policies and operating procedures entirely within the Bank's control the Committee believes it would be most productive to have Eximbank report to Congress on the competitiveness and administrative efficiency and effectiveness of all of the Bank's medium-term programs. This report would also include input from program users and the Bank's Advisory Committee. The Eximbank report should also note any improvements made to the medium-term programs since the date of enactment of this legislation and further improvements that the Bank plans to implement. This analysis, due to Congress no later than April 15, 1987, will provide Congress with a basis for determining whether further action is necessary.

Report on private insurance

Since 1961, legislation has allowed the Bank to issue export credit insurance in conjunction with private insurance companies and/or employ these companies as the Bank's agent in the issuance and servicing of insurance policies. From 1961 until 1983 Eximbank provided export credit insurance with a consortium of private insurance companies known as the Foreign Credit Insurance Association [FCIA]. FCIA-member insurance companies generally assumed a portion of the commercial risks associated with export transactions covered under the policies, with risk- and fee-sharing levels renegotiated annually between Eximbank and FCIA member companies. In 1983, however, the private insurance firms decided not to continue their risk-sharing agreement with Eximbank. While several factors contributed to this decision, the basic cause was the inherent conflict between private-sector profit objectives and Government public-policy objectives with respect to the issuance of export credit insurance.

The Bank has chosen to maintain the FCIA corporate structure, currently using FCIA as a non-risk-taking administrative and marketing agent. In maintaining the FCIA infrastructure Eximbank is also considering the feasibility of drawing private insurers back into the FCIA consortium at some point. In order to do so FCIA would presumably have to demonstrate that its insurance portfolio was sufficiently profitable and not overly risky. This approach by Eximbank raises two concerns.

First, in recent years, private insurers—despite some capacity constraints—have been relatively active in providing export credit insurance on their own account (with no U.S. Government assistance) for very creditworthy obligors. This development makes it imperative that Eximbank, as a U.S. Government entity, not inhibit the growth of private export credit insurance by underwriting transactions that private insurers will take on. Second, at the same time, the LDC debt crisis has greatly expanded the demand for credit risk protection in certain volatile markets. U.S. exporters frequently note, however, that Eximbank (and FCIA) show little interest in underwriting such sales, yet the Bank was created specifically for the purpose of facilitating export financing that commercial enterprises were unwilling or unable to provide.

It is clear that the function of FCIA, the interests of private insurers in providing export credit insurance, and the element of risk involved in export credits have all changed considerably in recent

years. The Committee, therefore, believes that a reassessment of Eximbank's role in export credit insurance should be undertaken. The Bank and the Office of Management and Budget, working together, and the General Accounting Office (separately) are directed by this legislation to submit reports to Congress not later than October 1, 1987, analyzing the roles of the U.S. Government and the private sector in providing U.S. export credit protection. These reports are to cover topics such as the following:

(1) To what extent and in what areas can private insurance companies provide U.S. export credit insurance on reasonable terms and conditions? What are the likely future capacities of and constraints on the private insurance sector with respect to increasing its activities in support of U.S. exports?

(2) How can Eximbank best ensure that U.S. exporters have sufficient export credit insurance available to them in riskier markets but, at the same time, not inhibit private insurers from offering export credit protection when possible? What type of relationship (coinsurer or reinsurer, for example) should the Bank attempt to develop with private insurers?

(3) In those situations where Government-supported export credit insurance is deemed necessary, is the use of an agent to administer and market Eximbank's insurance program desirable? If so, is a continuation of Eximbank's agency relationship with FCIA cost-efficent and economically effective from a public policy standpoint?

SECTION-BY-SECTION ANALYSIS

Short title

Section 1 provides that the legislation may be cited as the "Export-Import Bank Act Amendments of 1986."

Fees

Section 2 permits the Bank to charge reasonable fees covering the marginal costs of conferences, seminars, and publications provided by the Bank. It does not permit Eximbank to use such fees to offset other Bank expenses or to charge fees for normal administrative functions of the Bank, such as gathering information on prospective borrowers, or processing loan applications.

Medium-term direct credit program

Section 3 directs Eximbank to make available a competitive financing program for medium-term exports with a value of at least $50,000 in the form of direct loans to the foreign borrowers. It does not require the termination of the Bank's existing medium-term financing programs. In the case of all of the Bank's medium-term credit programs fee levels are required to be comparable to those charged for direct loans supporting long-term exports, and the programs should have simple administrative and documentation requirements.

Competitiveness mandate

Section 4 amends the Export-Import Bank Act of 1945 by highlighting the importance of fully neutralizing the effect of foreign officially supported export financing offers.

Credit application fees

Section 5 provides that Eximbank may not impose credit application fees unless the fee levels are competitive with those charged by the Bank's primary foreign competitors, are related to the risk of the transactions, and may be paid by the borrower or the exporter over the life of the loan rather than at the outset of the loan.

Reasonable assurance of repayment

Section 6 stipulates that Eximbank may not withdraw all new financing support to a country or deny financing for a transaction backed by a sovereign obligor or guarantor on the basis that there is not reasonable assurance of repayment if the National Advisory Council on International Monetary and Financial Policies determines that a reasonable assurance of repayment exists.

Multiple-exporter risk protection

Section 7 directs the Bank to provide creditworthy trade associations, export trading companies, and other multiple-exporter organizations with medium-term risk protection coverage on behalf of their members or clients. This will allow Eximbank-eligible transactioins of various exporters to be covered under one risk-protection policy administered by these exporters' trade association or other "umbrella" organization.

Program access

Section 8 requires that the Bank make all of its funding and risk-protection programs available to creditworthy banks (whether U.S. or foreign) or nonbank lenders. In addition, Eximbank is required to permit creditworthy U.S. exporters to apply directly for Eximbank funding or risk-protection support, rather than applying through their lenders.

Transferability of guarantees

Section 9 directs Eximbank to permit medium- and long-term obligations guaranteed or insured by the Bank to be transferred from the originating lenders to other lenders without limiting or terminating the guarantee or insurance provided by the Bank.

Authorization

Section 10 authorizes funds to be appropriated in the amount of $145,259,000 to cover the estimated net subsidy cost of new direct loans of $1.8 billion in fiscal year 1987. This appropriated amount is to be permanently added to the capital and reserves of the Bank. The Committee proposes that this figure be used by the Appropriations and Budget Committees to represent the Bank's direct lending programs for purposes of budget authority calculations.

Extension of charter

Section 11 extends the act for 10 years, to September 30, 1996.

Impact analysis

Section 12 amends section 1911 of the Export-Import Bank Act Amendments of 1978 by directing Eximbank before taking final action to consider and analyze, in writing, the views of domestic parties or persons who may be substantially adversely impacted by an Eximbank loan or financial guarantee. This requirement does not subject Eximbank to the provisions of the Administrative Procedures Act (subchapter II of chapter 5 of title 5, United States Code).

Matching foreign official export credits in the United States

Section 13 amends section 1912 of the Export-Import Bank Act Amendments of 1978 by emphasizing that this section applies to "non-competitive" financing offers by any foreign government on a sale into the U.S. irrespective of whether this government is a party to the existing OECD Arrangement on Guidelines for Officially Supported Export Credits or any similar agreement. Further, the responsibility for determining whether Eximbank financing will be extended to match the foreign offer is limited to the Eximbank.

Report on medium-term programs

Section 14 directs Eximbank to report to Congress no later than April 15, 1987, on the competitiveness of the Bank's medium-term programs and potential administrative burdens imposed on program users. This report shall include comments from program users and Eximbank's Advisory Committee as well.

Report on role of private insurance

Section 15 directs Eximbank and the Office of Management and Budget (jointly) and the General Accounting Office (separately) to report to Congress no later than October 1, 1987, on the need for Government involvement in export credit insurance, the present and likely future interest of private insurers in providing export credit insurance, and ways in which the U.S. Government can encourage private insurers to provide this insurance. Further, the reports will address the need for Eximbank to continue to employ the Foreign Credit Insurance Association as an agent in providing Government-backed export credit insurance.

BUDGETARY IMPACT

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 21, 1986.

Hon. JAKE GARN,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate on the Export-Import Bank Act

Amendments of 1986, as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on March 13, 1986.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: Unassigned.

2. Bill title: Export-Import Bank Act Amendment of 1986.

3. Bill status: As ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on March 13, 1986.

4. Bill purpose: The bill amends the Export-Import Bank Act of 1945, as amended, and extends the Bank's authority to make new commitments of loans, guarantees, and insurance from September 30, 1986 through September 30, 1996.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Authorization amount	145	0	0	0	0
Estimated direct loans	1,800	1,874	1,950	2,032	2,115
Estimated guaranteed loans	11,955	12,449	12,954	13,494	14,045
Estimated outlays	298	585	739	779	767

The cost of this bill in budget function 150.

Basis for estimate: The estimate assumes enactment of this legislation before September, 1986 and subsequent appropriation of the amounts authorized in fiscal year 1987.

Some amendments in the bill will increase the risk and cost of Eximbank credits by reducing the Bank Board's discretion in determining reasonable assurance of repayment of new commitments and requiring the Bank to offer credits that are the equivalent of those offered by foreign competitors. Other sections will increase the demand for Eximbank credits by modifying access to Eximbank financing, reducing discretion in matching foreign official export credits within the United States, and modifying the medium-term credit program.

The estimated loan levels are projected from the direct loan level implied in section 10 of the bill and baseline levels for guarantees and insurance. Outlays were estimated using historical disbursement and repayment rates and CBO economic assumptions.

Section 10 authorizes an appropriation of $145 million to the capital and reserves of the Bank. This interfund transfer will not raise net Federal Government outlays.

6. Estimated cost to State and local governments: None.

7. Estimated comparison: None.

8. Previous CBO cost estimate: None.

9. Estimated prepared by: Joseph Whitehill

10. Estimated approved by: James L. Blum, Assistant Director for Budget Analysis.

REGULATORY IMPACT

Pursuant to Rule XXVI, paragraph 11(b), of the rules of the Senate, the Committee has evaluated the regulatory impact of the bill and concludes that it would have no net impact on the regulatory burden of the Government.

CHANGES IN EXISTING LAW

The Committee has determined that it is necessary, in order to expedite the business of the Senate, to dispense with the requirements of Rule XXVI, paragraph 12, of the rules of the Senate, with respect to this legislation.

ADDITIONAL VIEWS OF MR. ARMSTRONG

EXPORT IMPORT BANK . . . A NOBLE IDEA BUT A COSTLY FAILURE

The Export-Import Bank is a program created with noble intentions that failed to achieve its promise. The Export Import Bank should not be reauthorized without substantive reform.

Not only does the Export Import Bank have a long of history of losing money, it also subsidizes foreign projects in direct opposition to our long-term national interests.

The Export-Import Bank was created in 1934 to provide direct loans, loan guarantees and insurance to assist U.S. exporters in responding to competitors subsidized by foreign governments. But there has been a steady drumbeat of criticism that the bank is not well run.

As early as 1975, the General Accounting Office expressed concern about the Bank's financial soundness. During the 1970's, the Bank was rapidly expanding its subsidy programs responding to keep up with increased foreign competition. These large subsidies resulted in the Bank's $1.1 billion operating losses during 1982–85.

In April 1983, GAO pointed out that the Bank's problem loans were increasing while its capital reserves were dwindling. The yearly losses came from primarily three sources: (1) interest expense exceeded interest revenue, (2) insurance and guarantee claims exceeded insurance premiums and guarantee fees, and (3) high administrative expenses. By far, the largest source of losses has been the negative interest rate differential. This is because the Bank's retained earnings have reduced from $2.0 billion to $1.4 billion from 1982–84.

In May 1985, GAO reported the Bank suffered even worse problems. GAO said the Bank's financial statements were misleading because they did not reflect losses likely to result from the uncollectibility of its loans. By not recognizing the loan losses, the Bank's financial statements overstated annual income (or understated annual losses) and, on a cumulative basis, substantially overstated the Government's equity position.

Last month GAO reemphasized its concerns about the Bank before the Senate Banking Committee stating, "As shown on the statements, the Bank's financial position does not appear as severe as it is in reality and the Congress may be led to make policy decisions that it would not otherwise make were the Bank's true financial condition fairly presented." GAO is right. Congress can no longer afford to make policy decisions that ignore the Bank's fiscal and political disasters.

GAO reports that the Bank has had net losses of $160 million in 1982, $247 million in 1983, and $343 million in 1984. Any other Bank would have folded long ago with such losses or would have taken steps to restore financial health. Instead, we continue to

ignore the Bank's problems and actually expand its authority in the "Middle Term Direct Lending Program". This direct lending program will now allow smaller exporters to participate in the Bank because this reauthorization bill lowers the loan request cap from $10,000,000 to $50,000. The Bank will undoubtly face more requests for loans with this expanded eligibility. Do we have so much confidence in the Bank's past performance that we should encourage this expansion? I think not.

In addition to its fiscal problems the Bank's activities markedly conflicts with U.S. foreign policy. Specifically, the Export-Import Bank Act urges the Bank to use its programs to advance U.S. policy in areas such as international terrorism, nuclear proliferation, environmental protection, and human rights. Yet, the Bank continues to fund programs in countries whose records in these areas are questionable at best. For example, in 1984, the Bank provided $84,750,000 in direct credit to Angola. It should be noted that Angola is a Marxist totalitarian state complete with a PLO training facility and a shameful record in the area of human rights. Certainly, neither U.S. policy interests nor the Angolan people are served by strengthening such a government.

Let's also consider a critical economic problem closer to home. Subsidies offered by the Eximbank are often counterproductive. By providing subsidies to American companies to compete with foreign exporters for projects, the United States may indirectly harm its own domestic companies. During committee consideration, the Senate Banking Committee was told of an example of this interference in a project where direct loans helped a foreign airline carrier at the expense of a U.S. carrier. To avoid such counterproductive subsidy, amendments are needed to direct the bank to fully evaluate and consider the impact its subsidies have on domestic industries, and potential loss of U.S. jobs before awarding any loan. If Congress must finance the Exim, at least Congress should know its potential for harm.

WILLIAM L. ARMSTRONG.

ADDITIONAL VIEWS OF MR. PROXMIRE ON THE EXPORT-IMPORT BANK AMENDMENTS ACT OF 1986

The Export-Import Bank Amendments Act of 1986 as reported by the Banking Committee has some shortcomings. For example, strengthening the Bank's competitiveness mandate, without acknowledging that this will make operating the Bank an increasingly expensive proposition, is not realistic. But, despite such shortcomings I am supporting the enactment of the Committee bill because it goes a long way toward putting the Bank on a "pay as you go basis" which has been a long time goal of mine. Also, the Committee Report does recognize that the amended competitiveness mandate does not require the Bank to match every element of an official export credit package being offered by a foreign export credit agency for a given transaction. So the Bank can continue to operate to neutralize the effect of foreign credits on international sales competition without trying to match foreign offers term for term.

Background on the Bank

The Eximbank was originally created in 1934 during the administration of President Franklin Roosevelt, in order to finance trade with the Soviet Union. After World War II, the Bank was made a wholly owned U.S. government corporation by the Export-Import Bank Act of 1945.

The present principal role of the Export-Import Bank is to promote U.S. export sales in most parts of the world. It does this through financing programs that include direct loans, financial guarantees to private lenders, and commercial and political risk insurance. The Bank began such operations over 40 years ago using $1 billion appropriated to it by Congress. Since then it has not received any appropriated funds. Instead it has borrowed from the Federal Financing Bank, an arm of the Treasury Department, to sustain its lending operations. It borrows at one rate and lends money to exporters at a lower rate.

The Congress determines for each fiscal year the total amount of new direct loans the Bank can authorize, and the total dollar amount of new guarantees and insurance it can agree to. The Bank's net cash flow in any given year is the difference between its receipts and cash disbursements. Receipts include loan repayments, interest received on outstanding loans, fees, insurance premiums, and claim recoveries. Cash disbursements include new loans made, losses on loans, claims paid on guarantees and insurance, interest paid on Eximbank borrowings, and administrative expenses.

During the first 32 years of its existence, the Bank was a profitable opration as it was able to charge more interest on loans than it paid for its borrowings. Its loan losses were also minimal. Since 1966, however, the Bank has generally had a negative spread be-

tween the average interest rate on its portfolio and the average rate of outstanding debt. Still the Bank was able to show a profit each year until 1982 because the earnings on its reserves and original capital were sufficient to offset losses due to the negative spread.

The Bank's deteriorating capital position is a result of loan losses and lending below the cost of funds

The General Accounting Office (GAO) annually examines the Eximbank's financial statements. Beginning in 1975, the GAO began expressing concerns about the adequacy of the Bank's capital reserve in light of its declining income. In its 1980 report, the GAO stated that because "the Bank's accumulated income is also its reserve against loan defaults and claims, it cannot use accumulated income to subsidize its lending rates and to absorb such losses without jeopardizing the adequacy of its reserves." Reporting in 1981, the year the Eximbank's total capital base peaked at $3.2 billion before beginning a rapid decline, the GAO stated that although that base was sufficient to cover loan losses resulting from borrowers who were facing financial difficulties, it was not adequate to cover possible losses on loans and guarantees that had not yet matured. GAO noted that the Department of the Treasury shared its concern over the adequacy of the Bank's reserve.

Since 1981 the capacity of the Eximbank's capital base to absorb potential losses has been further reduced because:

First, increased lending operations have not been accompanied by corresponding increases in income to its reserve for contingencies and defaults;

Second, risk of incurring future losses on delinquent loans and obligations has increased; and

Third, lending below the costs of funds has resulted in operating losses since 1982 and these losses are projected by the Bank to extend to at least 1990.

These developments demonstrate that the concerns GAO originally expressed in 1980 were well founded. Despite the increased risk of losses from Eximbank's expanding loan portfolio, the Bank's capital reserve has declined rapidly because of continued concessionary lending in the face of historically high interest rates. Earnings on the Bank's reserve and capital are no longer sufficient to offset the negative interest spreads on outstanding debt and loan investments. The annual losses are eating up the Bank's capital base.

My 1984 proposal to put the Bank on sound financial footing

In 1984 I introduced S. 2906, the Eximbank Capital Restoration Act of 1984, as a proposed means of remedying the Eximbank's dwindling capital position. That bill simply required the Bank to maintain a minimum level of capital stock and retained earnings in an amount not less than $2 billion and authorized Congress to appropriate the funds needed by the Bank to comply with that requirement. After introducing that bill I wrote to the Office of Management and Budget (OMB), the Eximbank, the Congressional Budget Office (CBO), the Treasury Department and the General Accounting Office (GAO) asking for comments on my proposal. The

comments were very interesting. In its reply, OMB said that it opposed my bill "because it could result in a curtailment of Exim's lending and guarantee authority should its reserves fall below $2 billion." Well I already knew that. What I wanted to know was whether OMB had any suggestions of its own for protecting the taxpayer from the cost of an inevitable massive bail out of the Bank. It had none.

The Eximbank itself stated that while it shared my concerns "about the decline in the level of the Bank's equity position," it did not think it would hurt the Bank's credibility as "all obligations of the Bank are obligations for which the full faith and credit of the U.S. Government is pledged." In other words, do not worry if the Bank is losing lots of money—after all, the American taxpayer will be around to pick up whatever tab is ultimately run up. My bill was designed to protect taxpayers from what could be a very expensive bank bailout by putting the Bank on a pay-as-you-go basis and by requiring it to maintain at least $2 billion in capital and reserves to cover bad loans.

The Congressional Budget Office, in contrast to the Bank and the Reagan administration, liked my bill. The CBO in its response said my bill "would improve budgetary oversight and control of the Eximbank. By requiring an annual appropriation for operating losses, the bill would force the Congress to recognize annually the subsidy inherent in Bank lending." That was my key aim, to have Congress recognize annually the subsidy inherent in the Bank's lending programs instead of going along with the myth that the Bank operates without cost to our taxpayers.

GAO contends the Bank may already be broke

In its most recent report on the Eximbank, dated May 29, 1985, the GAO said that its then latest audit of the Bank's financial statements, using generally accepted accounting principles, suggested that the Bank's reserve for contingencies and defaults might already be depleted. If the GAO audit was right, it means the Bank is now consuming its original $1 billion in capital to fund its ongoing operations. When the money is gone the Bank will be broke. Last year the President's budget projected the Bank would have losses from 1986 through 1990 that would reach $2 billion. These two projections make clear that the Bank will soon be without any capital to cover possible losses. It also means the Bank's bad loans will become the taxpayer's responsibility since obligations of the Bank are backed by the full faith and credit of the United States government.

I believed that since the Bank's Charter expires on September 30, 1986 unless renewed by Congress, that this was the year to put the Bank on sounder financial footing. So on February 6th I re-introduced my Export-Import Bank Capital Restoration Act and added a provision obligating the Bank to estimate its loan losses and to deduct that amount from its retained earnings in accordance with generally accepted accounting principles. This reform, recommended by GAO, would enable the Congress to have a clearer picture of the Bank's true financial condition. In introducing my bill I also pointed out that allowing the capital position of the Eximbank to deteriorate while its obligations increased contrasts

sharply with the policies Congress is following with regard to commercial banks to ensure their safety and soundness. In 1983, Congress directed Federal banking agencies to require banks to maintain adequate capital levels and to set up special reserves for certain types of international loans, among them those loans for which there are no definite prospects for the orderly restoration of debt service. Since then, the FDIC, Comptroller, and Federal Reserve have taken action to require the banks they regulate to increase the ratio of their capital and reserves in relation to bank exposures. The Eximbank, as the GAO continued to point out in its 1985 bank audit, has not taken similar precautions.

The Committee's hearing to reauthorize the Bank's operation revealed increasing loan losses

On February 7, 1986 the Banking Committee held a hearing to consider reauthorizing the Export-Import Bank's Charter. I requested that a witness from GAO be called to testify about the Bank's financial condition. That witness Mr. Frederick D. Wolf, the Director of GAO's Accounting and Financial Management Division, said GAO has "reported since 1983 that the Bank's financial statements present a misleading picture of its true financial condition" because they "do not reflect the losses that are likely to occur due to the probable. uncollectibility of a significant portion of the Bank's loans that are owed or guaranteed by foreign governments . . . The principle of recognizing loan losses in accordance with generally accepted accounting practices is well established for private financial institutions and should apply to government corporations such as the Export-Import Bank." Mr. Wolf testified that the amount of the Bank's problem loans is increasing at the same time the Bank's retained earnings are dwindling. As of September 30, 1985, he noted, the Bank's "problem loans will exceed 400 percent of the Bank's retained earnings". Mr. Wolf further stated that a "fair presentation of loan receivables requires a recognition in the Bank's account of the diminished value of loans through a charge against current year's income and a corresponding increase in an allowance for loan losses." Mr. Wolf added that determining an allowance for losses on loans is a common practice of financial institutions and the Eximbank should adopt a similar practice "to more accurately reflect the cost of its operations". Not recognizing loan losses as a cost of doing business, he warned, might lead Congress to make policy decisions that it would not otherwise make were the Bank's true financial condition fairly presented.

During that February 7 hearing Senator Heinz asked Mr. Wolf whether the GAO recommendation would not penalize the Bank for making riskier loans when that is what Congress has directed it to do. Mr. Wolf said no, the policy decision is up to Congress. What GAO as the Eximbank's auditor wanted, was for the Bank's books to reflect the costs of its riskier loans so that Congress would make decisions based on accurate data. If the Bank kept honest books, Mr. Wolf said, Congress, when it authorized Eximbank loan programs, would recognize they have a credit cost (due to loan losses) as well as an interest rate differential cost.

Pay-as-you-go provision

I am pleased that the bill reported by the Committee reflects the essence of my pay-as-you-go proposal. Rather than requiring any fixed level of capital as I had originally proposed, the Committee bill requires an annual appropriation to the Ex-Im Bank to reflect the net subsidy cost of the Bank's direct lending program for the budget year. The net subsidy cost is measured by the difference between the interest rate charged by the Bank on its loans and the rate that would be charged by a private sector lender on loans of comparable risk and maturity.

For example, if the Bank made a 10-year loan at 8 percent while the going private market rate on such a loan was 11 percent, the subsidy would be calculated on the basis of the 3 percent differential. The Bank would calculate the present value of the future repayments of principal and interest on the loan discounted at 11 percent. The difference between this value and the amount of the loan would represent the value of the subsidy in dollars.

Under the pay-as-you-go procedure, the Bank will estimate the net subsidy cost of its proposed direct lending program for the forthcoming budget year and request a direct appropriation to cover this cost. This appropriation will become part of the capital base of the Bank and will, in effect, compensate the Bank for the losses on its loan program. In so doing, the Bank will maintain an adequate level of capital relative to the size of its loan program and the degree of subsidy being extended.

This new procedure will not affect the way the Bank's outlays are recorded in the budget and will have no effect on the size of the budget deficit. An argument could be made that insasmuch as the Bank is receiving an appropriation for the subsidy element of its lending program, the entire value of the lending program need not be counted as budget authority as it is now under current scorekeeping practices. However, the Banking Committee did not address this issue and it remains a matter for the Budget Committees and the Congressional Budget Office to consider.

I believe this new procedure will result in much better budgetary practices. The true subsidy cost of the Bank will be highlighted in the budget, ending once and for all the myth that the Bank somehow does not cost the taxpayers any money. It also gives the Congress more control over the ultimate cost of the program. For example, should market interest rates increase substantially following an appropriation to the Bank, the Bank would have to constrain its lending program in order to live within its subsidy money. Of course, Congress could always approve a supplemental appropriation in order to maintain the same level of direct lending. But at least it would be doing so with its eyes open and in recognition of the true costs involved.

WILLIAM PROXMIRE.

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